

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4845

FISCAL
NOTE

BY DELEGATES ANGELUCCI AND PYLES

[Introduced February 11, 2020; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended, relating
 2 to increasing the community service hours a person may be ordered to perform upon
 3 conviction of or pleading guilty to littering in this state.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL
 ACTION PLAN.**

**§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund;
 evidence; notice violations; litter receptacle placement; penalty; duty to enforce
 violations.**

1 (a)(1) No person may place, deposit, dump, throw, or cause to be placed, deposited,
 2 dumped, or thrown any litter as defined in section two of this article, in or upon any public or
 3 private highway, road, street, or alley; any private property; any public property; or the waters of
 4 the state or within 100 feet of the waters of this state, except in a proper litter or other solid waste
 5 receptacle.

6 (2) It is unlawful for any person to place, deposit, dump, throw, or cause to be placed,
 7 deposited, dumped, or thrown any litter from a motor vehicle or other conveyance or to perform
 8 any act which constitutes a violation of the motor vehicle laws contained in §17C-14-14 of this
 9 code.

10 (3) If any litter is placed, deposited, dumped, discharged, thrown, or caused to be placed,
 11 deposited, dumped, or thrown from a motor vehicle, boat, airplane, or other conveyance, it is
 12 *prima facie* evidence that the owner or the operator of the motor vehicle, boat, airplane, or other
 13 conveyance intended to violate the provisions of this section.

14 (4) Any person who violates the provisions of this section by placing, depositing, dumping,
 15 or throwing or causing to be placed, deposited, dumped, or thrown any litter on his or her private
 16 property in an amount not exceeding 50 pounds in weight is not subject to the criminal provisions

17 of this section.

18 (5) Any person who violates the provisions of this section by placing, depositing, dumping,
19 or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for
20 commercial purposes, in an amount not exceeding 100 pounds in weight or 27 cubic feet in size,
21 is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100
22 nor more than \$2,500, or in the discretion of the court, sentenced to perform community service
23 by cleaning up litter from any public highway, road, street, alley, or any other public park or public
24 property, or waters of the state, as designated by the court, for not less than ~~eight~~ 100 nor more
25 than ~~one hundred~~ 130 hours, or both. If any person is convicted of the misdemeanor by placing,
26 depositing, dumping, or throwing litter in the waters of the state, that person shall be fined \$500
27 to no more than \$3,000, or in the discretion of the court sentenced to perform community service
28 by cleaning up litter from any waters of the state, as designated by the court, for not less than
29 ~~twenty~~ 100 to no more than ~~one hundred twenty~~ 130 hours, or both.

30 (6) Any person who violates the provisions of this section by placing, depositing, dumping,
31 or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for
32 commercial purposes, in an amount greater than 100 pounds in weight or 27 cubic feet in size,
33 but less than 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor. Upon
34 conviction he or she is subject to a fine of not less than \$2,500 nor more than \$5,000, or in the
35 discretion of the court, may be sentenced to perform community service by cleaning up litter from
36 any public highway, road, street, alley, or any other public park or public property, or waters of
37 the state, as designated by the court, for not less than ~~sixteen~~ 100 nor more than 200 hours, or
38 both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing
39 litter in the waters of the state, that person shall be fined \$3,000 to no more than \$5,500, or in the
40 discretion of the court sentenced to perform community service by cleaning up litter from any
41 waters of the state, as designated by the court, for not less than ~~twenty~~ 100 to no more than 220
42 hours, or both.

43 (7) Any person who violates the provisions of this section by placing, depositing, dumping,
44 or throwing or causing to be placed, deposited, dumped, or thrown any litter in an amount greater
45 than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for
46 commercial purposes is guilty of a misdemeanor. Upon conviction, the person shall be fined not
47 less than \$2,500 or not more than \$25,000 or confinement in jail for not more than one year or
48 both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing
49 litter in the waters of the state, that person shall be fined \$3,000 to no more than \$11,000, or
50 confinement in jail for not more than one year or both. In addition, the violator may be guilty of
51 creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the
52 enforcement provisions of §22-15-15 of this code.

53 (8) Any person convicted of a second or subsequent violation of this section is subject to
54 double the authorized range of fines and community service for the subsection violated.

55 (9) The sentence of litter clean up shall be verified by environmental inspectors from the
56 Department of Environmental Protection. Any defendant receiving the sentence of litter clean up
57 shall provide, within a time to be set by the court, written acknowledgment from an environmental
58 inspector that the sentence has been completed and the litter has been disposed of lawfully.

59 (10) Any person who has been found by the court to have willfully failed to comply with
60 the terms of a litter clean up sentence imposed by the court pursuant to this section is subject to,
61 at the discretion of the court, double the amount of the original fines and community service
62 penalties originally ordered by the court.

63 (11) All law-enforcement agencies, officers and environmental inspectors shall enforce
64 compliance with this section within the limits of each agency's statutory authority.

65 (12) No magistrate or municipal court judge may dismiss an action brought under the
66 provisions of this section without notification to the prosecuting attorney of that county of his or
67 her intention to do so and affording the prosecuting attorney an opportunity to be heard.

68 (13) No portion of this section restricts an owner, renter, or lessee in the lawful use of his

69 or her own private property or rented or leased property or to prohibit the disposal of any industrial
70 and other wastes into waters of this state in a manner consistent with the provisions of §22-11-1
71 *et seq.* of this code. But if any owner, renter, or lessee, private or otherwise, knowingly permits
72 any of these materials or substances to be placed, deposited, dumped, or thrown in a location
73 that high water or normal drainage conditions will cause these materials or substances to wash
74 into any waters of the state, it is *prima facie* evidence that the owner, renter, or lessee intended
75 to violate the provisions of this section: *Provided*, That if a landowner, renter, or lessee, private or
76 otherwise, reports any placing, depositing, dumping, or throwing of these substances or materials
77 upon his or her property to the prosecuting attorney, county commission, the Division of Natural
78 Resources or the Department of Environmental Protection, the landowner, renter or lessee will
79 be presumed to not have knowingly permitted the placing, depositing, dumping, or throwing of the
80 materials or substances.

81 (b) Any indication of ownership found in litter is *prima facie* evidence that the person
82 identified violated the provisions of this section: *Provided*, That no inference may be drawn solely
83 from the presence of any logo, trademark, trade name, or other similar mass reproduced things
84 of identifying character appearing on the found litter.

85 (c) Every person who is convicted of or pleads guilty to disposing of litter in violation of
86 subsection (a) of this section shall pay a civil penalty of \$2,000 as costs for clean-up, investigation,
87 and prosecution of the case, in addition to any other court costs that the court is otherwise required
88 by law to impose upon a convicted person.

89 The clerk of the circuit court, magistrate court, or municipal court in which these additional
90 costs are imposed shall, on or before the last day of each month, transmit 50 percent of a civil
91 penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury
92 to the credit of a special revenue fund known as the Litter Control Fund which was transferred to
93 the Department of Environmental Protection. Expenditures for purposes set forth in this section
94 are not authorized from collections but are to be made only in accordance with appropriation and

95 in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the
96 provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found from time
97 to time to exceed the funds needed for the purposes set forth in this article may be transferred to
98 other accounts or funds and designated for other purposes by appropriation of the Legislature.

99 (d) The remaining 50 percent of each civil penalty collected pursuant to this section shall
100 be transmitted to the county or regional solid waste authority in the county where the litter violation
101 occurred. Moneys shall be expended by the county or regional solid waste authority for the
102 purpose of litter prevention, clean up, and enforcement. The county commission shall cooperate
103 with the county or regional solid waste authority serving the respective county to develop a
104 coordinated litter control program pursuant to §22C-4-8 of this code.

105 (e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle
106 or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case
107 may be, a summary of this section and §17C-14-14 of the code.

108 (f) The Commissioner of the Division of Highways shall cause appropriate signs to be
109 placed at the state boundary on each primary and secondary road, and at other locations
110 throughout the state, informing those entering the state of the maximum penalty provided for
111 disposing of litter in violation of subsection (a) of this section.

112 (g) Any state agency or political subdivision that owns, operates, or otherwise controls any
113 public area designated by the secretary by rule promulgated pursuant to §22-15A-3(a)(8) of this
114 code shall procure and place litter receptacles at its own expense upon its premises and shall
115 remove and dispose of litter collected in the litter receptacles. After receiving two written warnings
116 from any law-enforcement officer or officers to comply with this subsection or the rules of the
117 secretary, any state agency or political subdivision that fails to place and maintain the litter
118 receptacles upon its premises in violation of this subsection or the rules of the secretary shall be
119 fined \$30 per day of the violation.

NOTE: The purpose of this bill is to increase the community service hours for littering.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.